

ORDINANCE NO. 2007-18

AN ORDINANCE OF THE CITY OF WENATCHEE  
AUTHORIZING THE EXECUTION OF AN  
INTERLOCAL AGREEMENT WITH THE GREATER  
WENATCHEE REGIONAL EVENTS CENTER PUBLIC  
FACILITIES DISTRICT.

WHEREAS, pursuant to chapter 35.57 RCW and Ordinance No. 2006-19 passed by the City Council on June 15, 2006, the City entered into an Interlocal Agreement with the City of East Wenatchee, the City of Cashmere, the City of Chelan, the City of Rock Island, the City of Entiat, the Town of Waterville, Chelan County and Douglas County dated as of June 15, 2006 (the "Interlocal Agreement") for the creation of the Greater Wenatchee Regional Events Center Public Facilities District (the "District"); and

WHEREAS, the District was created for the purpose of acquiring, constructing, owning, remodeling, maintaining, equipping, re-equipping, repairing, financing and operating (either directly or by contract) a multipurpose regional special events center located in Wenatchee, Washington, with associated parking (the "Regional Center"); and

WHEREAS, the City has entered into an Amended and Restated Lease with Purchase Option Agreement (the "Lease Agreement") with the District and Wenatchee Events Center, LLC, a Washington limited liability company (the "Lessor"), pursuant to which the Lessor will design, develop, finance, construct, complete and thereafter lease to the District the Regional Center; and

WHEREAS, the Lease Agreement requires the District to make Lease Payments (as defined in the Lease Agreement) to the Lessor on the dates and pursuant to the terms of the Lease Agreement; and

WHEREAS, Section 7.1(e) of the Lease Agreement requires the City to enter into a contingent loan agreement prior to the time the District's obligation to make Lease Payments commences committing the City to make loans to the District if and when the District does not have sufficient money to pay such Lease Payments when due; and

WHEREAS, chapter 39.34 RCW authorizes public agencies to enter into agreements for cooperative action; and

WHEREAS, the City now desires to enter into an interlocal agreement meeting the requirements of the Lease Agreement to provide for the payment of Lease Payments in the event that the District does not have sufficient funds to do so;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF WENATCHEE:

Section 1. Approval of Interlocal Agreement. The City Council hereby approves the Interlocal Agreement between the City and the District, which is attached to this ordinance as

Exhibit A and incorporated herein by reference, and authorizes the Mayor to execute the Interlocal Agreement.

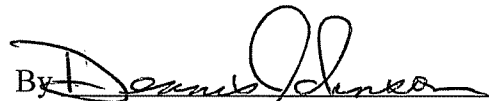
Section 2. Nature of the City Obligation. The City hereby irrevocably pledges its full faith, credit and resources to advance funds to the District under the terms of the Interlocal Agreement. The City further irrevocably covenants that it will budget and make annual levies of ad valorem taxes upon all of the property within the boundaries of the City subject to taxation within and as a part of the tax levy permitted to be levied by the City without a vote of the electors, in amounts sufficient (together with other legally available funds) to advance funds due to the District as required in the Interlocal Agreement.

Section 7.1(e) of the Lease Agreement provides that to the extent that the District does not have non-voted general obligation debt capacity at least equal to the principal amount of the lease payments at the time the District's obligation to make lease payments commences, the City shall be obligated to pay the amount of lease payments in excess of the District's non-voted debt capacity. The City expects to meet its obligations under the Lease Agreement from the CERB grant, which has been approved by the State of Washington, and other legally available general fund money of the City. The attached Interlocal Agreement addresses the City's obligation to advance funds to the District to the extent of the District's non-voted debt and does not amend or eliminate the City's obligation for the amount in excess of the District's debt capacity as provided in Section 7.1(e) of the Lease Agreement.

Section 3. Effective Date. This ordinance shall become effective following its passage and publication as provided by law.

PASSED this ~~19<sup>th</sup>~~ day of July, 2007.  
23<sup>rd</sup>

CITY OF WENATCHEE

By   
Mayor

ATTEST:

  
City Clerk

Approved as to form only:

\_\_\_\_\_  
Prosecuting Attorney

## ATTACH INTERLOCAL AGREEMENT

Please return to:  
City of Wenatchee  
ATTN: Vicki Reister  
PO Box 519  
Wenatchee, WA 98807-0519

**INTERLOCAL AGREEMENT**

**between**

**CITY OF WENATCHEE, WASHINGTON**

**and**

**GREATER WENATCHEE REGIONAL EVENTS CENTER  
PUBLIC FACILITIES DISTRICT**

**dated**

**July 24, 2007**





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## INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (this "Agreement") dated as of July 24, 2007, by and between the CITY OF WENATCHEE, WASHINGTON (the "City"), and the GREATER WENATCHEE REGIONAL EVENTS CENTER PUBLIC FACILITIES DISTRICT, a public body corporate and politic of the State of Washington (the "District");

### WITNESSETH:

WHEREAS, pursuant to Ordinance No. 2006-19 passed by the City Council on June 15, 2006, the City entered into an Interlocal Agreement with the City of East Wenatchee, the City of Cashmere, the City of Chelan, the City of Rock Island, the City of Entiat, the Town of Waterville, Chelan County and Douglas County dated as of June 15, 2006 for the creation of the District; and

WHEREAS, the District was formed pursuant to the authority granted by chapter 35.57 RCW for the specific purpose of acquiring, constructing, owning, remodeling, maintaining, equipping, re-equipping, repairing, financing, and operating (either directly or by contract) a multipurpose regional special events center with associated parking (the "Regional Center"); and

WHEREAS, the City, the District and Wenatchee Regional Center, LLC, a Washington limited liability company (the "Lessor") entered into an Amended and Restated Lease with Purchase Option Agreement (the "Lease Agreement") pursuant to which the Lessor will design, develop, finance, construct, complete and thereafter lease to the District a Regional Center to be constructed on property owned by Lessor in Wenatchee, Washington; and

WHEREAS, the District is obligated under the Lease Agreement to make Lease Payments (as defined in the Lease Agreement) to the Lessor commencing on the Substantial Completion Date (as defined in the Lease Agreement) of the Regional Center; and

WHEREAS, the Lease Agreement grants the District the option to arrange for the issuance of long-term financing, including the issuance of certificates of participation, for the Regional Center; and

WHEREAS, Section 7.1(e) of the Lease Agreement requires that the City enter into an agreement with the District committing the City to make loans to the District if the District does not have sufficient funds to pay the Lease Payments when due; and

WHEREAS, chapter 39.34 RCW authorizes public agencies to enter into agreements for cooperative action; and

WHEREAS, the City has approved the form and execution of this Agreement; and

WHEREAS, in consideration for the City's commitment to make such advances, upon the terms and conditions set forth herein, the District will make the financial covenants set forth herein;



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NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto covenant and agree as follows.

## ARTICLE I

### Definitions

Unless the context clearly requires otherwise, capitalized terms used in this Agreement have the meanings given such terms in the Lease Agreement.

## ARTICLE II

### Advances to the District;

### Repayment Terms; Interest Rate; Limitation of Liability

Section 2.01. Advances to the District. The City agrees to make advances for the benefit of the District at the times and in the amounts set forth in Section 2.02. The District agrees to borrow the amounts described above from the City pursuant to this Agreement for the purpose of paying Lease Payments. The District further agrees to repay the amounts described above to the City pursuant to this Agreement.

The City shall have no obligation to advance Lease Payments to the District until the Regional Events Center is Substantially Complete.

As provided in Section 7.1 of the Lease, the District's Lease Payments shall be limited to the District's non-voted general obligation debt capacity at the time the District's obligation to make Lease Payments commences. The City's obligation to loan money to the District under this Agreement shall only extend to the proportionate amount of each Lease Payment that is within the debt capacity of the District, plus accrued interest on such proportionate amount of Lease Payments, and the aggregate principal amount of outstanding advances to be made by the City pursuant to this Agreement shall not exceed the lesser of the District's debt capacity at the time the District's obligation to make Lease Payments begins or the aggregate amount of the principal portions of the Lease Payments plus accrued interest.

Section 2.02. Time of Advances. (a) Upon receipt of the notice from the District of any deficiency in the Required Balance, the City shall take such action as is necessary to budget the amounts required to provide for the advances described in subsection (b) below. If the need to budget for advances by the City to the District was not reasonably foreseeable at the time the City prepared its annual budget, the City shall budget for such advances in sufficient time to provide for the advances described in subsection (b). No later than 60 days prior to each Lease Payment Date, the District and the City shall review the status of amounts on deposit with the District to determine whether any City budgetary action may be required prior to the upcoming Lease Payment Date.



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As used herein, the term ***Required Balance*** means:

(1) as of each Lease Payment Date, an amount equal to the interest which shall have accrued on the Lease Payments from and including the immediately preceding Lease Payment Date to but not including the Lease Payment Date; and

(2) as of each Lease Payment Date, an amount equal to the principal of any Lease Payment due on such date.

(b) For as long as the Lease Payments remain outstanding, if the Required Balance on hand is not sufficient to pay the interest or principal coming due two business days prior to the Lease Payment Date, then the City shall make an advance to the District no later than one business day prior to the Lease Payment Date, in an amount sufficient to fund the Required Balance (i.e., an amount sufficient to pay the Lease Payment coming due on the upcoming Lease Payment Date).

Section 2.03. Repayment Terms. Each advance to the District made pursuant to Section 2.02 shall be repaid by the District as provided in Section 2.05.

Section 2.04. Interest Rate. The rate of interest borne by each advance made pursuant to Section 2.02 shall be the higher of (a) the effective interest rate under the Lease Agreement or the principal components of the Lease Payments or (b) the rate on the State of Washington Local Government Investment Pool as of the date of each advance; or (c) the average interest rate on all invested funds of the City as of the date of each advance. The City may in its discretion charge a lower rate of interest. Each advance made under the terms of this Agreement will bear interest on the unpaid principal amount thereof from the date of the advance until the date repaid.

Section 2.05. Procedures for Repayments of Advances. On the 31<sup>st</sup> day of each December, provided that the amount available to the District as of such date is sufficient to pay the upcoming Lease Payment, the District will utilize all funds available for such purpose to make repayment to the City pro-rata for the principal amount of each advance then remaining unpaid with interest thereon as provided in Section 2.04.

Section 2.06. Nature of District's Obligation. The District's obligations under this Agreement shall continue in effect and shall survive the satisfaction of the District's obligations under the Lease Agreement until such time as principal and interest due to the City pursuant to any advances made hereunder have been repaid.

Section 2.07. Nature of City's Obligation. The obligation of the City to advance funds to the District in the amounts, at the times and in the manner described herein shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise. The City irrevocably pledges its full faith, credit and resources to advance funds to the District under Sections 2.01 and 2.02 above. The City further irrevocably covenants that it will budget and make annual levies of *ad valorem* taxes upon all of the property within the boundaries of the City subject to taxation within and as a part of the tax levy permitted to be





levied by the City without a vote of the electors, in amounts sufficient (together with other legally available funds) to advance funds due to the District as required in this Agreement.

The obligations of the City hereunder shall terminate upon payment in full of the principal of all Lease Payments.

The City acknowledges and agrees that the District will pledge all Sales Tax Revenues and other revenue from the Public Facilities District Improvements to the payment of the Lease Payments. The parties to this Agreement acknowledge that the Lessor and the Construction Lender will rely on the terms of this Agreement, including the pledge by the City to make the advances at the times and in the amounts set forth in Sections 2.01 and 2.02. The City acknowledges that its commitments under this Agreement constitute valid and binding enforceable, contractual commitments.

### ARTICLE III

#### Rights of City Upon Making Advances

If the City has made any advances to the District under this Agreement and such advances have not been repaid in full, the City may have access to and inspect, examine and make copies of the books and records and any and all accounts and data of the District.

### ARTICLE IV

#### Obligations of the District

Section 4.01. Regional Center. The District shall cause the Regional Center to be operated and maintained as a regional center (as such term is defined in chapter 35.57 RCW) in a business-like fashion (including the maintenance of proper and customary property and liability insurance with respect to the Regional Center) and will cause all books and records to be maintained thereto.

Section 4.02. Third Party Beneficiary. The Lessor and the Construction Lender shall be third party beneficiaries hereof and the commitments made herein shall be for their further benefit.

### ARTICLE V

#### Remedies Upon Default

Section 5.01. Remedies of City on Default. Upon the occurrence of a default by the District in its obligations hereunder, the City may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the City may deem most effectual to protect and enforce any of its rights or interests



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hereunder. Notwithstanding the foregoing, in no event may the City terminate its obligations hereunder.

Section 5.02. Remedies of District on Default. Upon the occurrence of a default by the City in its obligations to make advances to the District hereunder, the District and any third party beneficiary hereof may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the District may deem most effectual to protect and enforce any of its rights or interests hereunder.

Section 5.03. No Remedy Exclusive. No remedy conferred upon or reserved to either party by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, and either party hereto shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Agreement, or otherwise.

Section 5.04. Agreement to Pay Attorneys' Fees and Expenses. If a default arises under any of the provisions of this Agreement and either party hereto or any third party beneficiary hereof should employ attorneys or incur other expenses for the collection of amounts due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the other party contained in this Agreement, on demand therefor, the nonprevailing party shall pay or reimburse the prevailing party for the reasonable fees of such attorneys and such other expenses so incurred.

## ARTICLE VI

### Miscellaneous

Section 6.01. Governing Law; Venue. This Agreement is governed by and shall be construed in accordance with the substantive laws of the State of Washington and shall be liberally construed so as to carry out the purposes hereof. Except as otherwise required by applicable law, any action under this Agreement shall be brought in the Superior Court of the State of Washington in and for Chelan County.

Section 6.02. Notices. Except as otherwise provided herein, all notices, consents or other communications required hereunder shall be in writing and shall be sufficiently given if addressed and mailed by first-class, certified or registered mail, postage prepaid and return receipt requested, as follows:

To the City:

CITY OF WENATCHEE  
Attn: Administrative Services Director  
P.O. Box 519  
Wenatchee, Washington



To the District:

GREATER WENATCHEE REGIONAL EVENTS CENTER  
PUBLIC FACILITIES DISTRICT  
c/o City of Wenatchee  
Attn: Administrative Services Director  
129 S. Chelan  
Wenatchee, Washington

The City or the District may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. Notices shall be deemed served upon deposit of such notices in the United States mail in the manner provided above.

Section 6.03. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and the District and their successors. This Agreement may not be assigned without the prior consent of the City and District.

Section 6.04. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6.05. Amendments. This Agreement may not be effectively amended, changed, modified or altered, except by an instrument in writing duly executed by the City and the District (or their successors) and approved by each third-party beneficiary. In any event, no amendment shall be made to Section 2.01 and 2.02 of this Agreement. If the Certificates are rated by a rating agency, then no such amendment shall be permitted unless the District, has received written confirmation from the rating agency that such amendment will not result in a reduction or withdrawal of the rating on the Certificates. If the Certificates are not rated by a rating agency, then no such amendment will be permitted unless in the opinion of the District such amendment will not materially adversely affect the owners of the Certificates. This Agreement may not be terminated until the Certificates have been paid in full or defeased, unless the City has assumed all liability for payment of the principal of and interest on the Certificates when due and shall have pledged its full faith and credit to such payment.

Section 6.06. Waiver of Breach. No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it.

Section 6.07. No Rights Created in Third Parties. Except as otherwise expressly provided herein, the terms of this Agreement are not intended to establish nor to create any rights

in any persons or entities other than the City, the District, the Lessor, the Construction Lender and the respective successors and assigns of each.

Section 6.08. Time of Essence. Time and all terms and conditions shall be of the essence of this Agreement.

Section 6.09. Effective Date of and Termination of Agreement. This Agreement shall take effect upon its execution. It is the intent of the District and the City that the District will assign the Lease Agreement to a trustee and that certificates of participation will be issued to provide the long-term financing for the Regional Events Center. This Agreement shall terminate upon the assignment of the Lease Agreement to a trustee upon the closing of the long-term financing or the payment in full of the Lease Payments; provided, however, that if the District does not exercise its option to arrange for certificates to be issued and the Lessor exercises its option to assign this Agreement to a trustee or non-profit corporation pursuant to Exhibit H of the Lease Agreement, this Agreement shall terminate upon the issuance of such certificates and the City and District entering into an Interlocal Agreement to secure such certificates of participation substantially in the form of this Agreement.

Section 6.10. Counterpart Signatures. This Agreement may be executed in counterparts and each such counterpart shall for all purposes be deemed to be an original and together shall constitute but one and the same instrument.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

[signature page to follow]

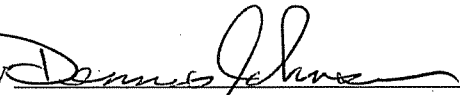


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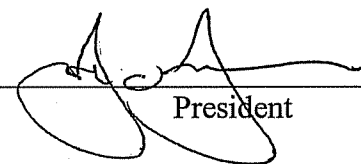
IN WITNESS WHEREOF, the City and the District have caused this Agreement to be executed in their respective names by their duly authorized officers, and have caused this Agreement to be dated as of the date set forth on the first page hereof.

APPROVED:

CITY OF WENATCHEE, WASHINGTON

By   
Mayor

GREATER WENATCHEE REGIONAL  
EVENTS CENTER PUBLIC FACILITIES  
DISTRICT

By   
President